

Fact Sheet
Military Commissions
10/16/2006

- Military Commissions have historically been used to prosecute enemy combatants who violate the laws of war. The last time the United States used the Military Commission process was during World War II.
- Military Commissions provide:
 - A full and fair trial;
 - Protection for classified and sensitive information; and
 - Protection and safety for all personnel participating in the process, including the accused.
- The Military Commissions Act of 2006 establishes procedures governing the use of Military Commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by Military Commission. The Military Commissions Act of 2006 authorizes the President to establish Military Commissions.
- The Military Commissions Act of 2006 establishes jurisdiction over any alien unlawful enemy combatant. The Military Commissions Act of 2006 defines alien unlawful enemy combatant as:
 - A person who as engaged in hostilities or has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or
 - A person who has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal (CSRT) or another competent tribunal established under the authority of the President or the Secretary of Defense.
- The Chief Prosecutor drafts charges, when appropriate, on individuals subject to the Military Commissions Act of 2006.
- The Convening Authority convenes the Military Commission and details Military Commission members.
- Each Military Commission consists of a military judge and at least five members. In a case where the accused may be sentenced to the death, twelve members are required.

- The Military Judge of a Military Commission must be certified in accordance with the Uniform Code of Military Justice. The Military Judge rules upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.
- Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission.
- Each accused tried by Military Commission has the following procedural safeguards:
 - The presumption of innocence;
 - Proof of guilt beyond a reasonable doubt;
 - The accused may represent himself;
 - Statements obtained by the use of torture are inadmissible;
 - The right to call and cross examine witnesses;
 - Nothing said by an accused to his attorney, or anything derived there from, may be used against him at trial;
 - No adverse inference from remaining silent;
 - The overall requirement that any Military Commission proceeding be full and fair; and
 - To assist the accused in preparing a defense, each accused has a Military Defense Counsel provided at no cost to him.
- The accused may also hire a civilian defense counsel at no cost to the government as long as that counsel:
 - Is a United States Citizen;
 - Is admitted to practice in a United States jurisdiction;
 - Has not been the subject of sanction or disciplinary action;
 - Is eligible for and obtains at least a SECRET level clearance; and
 - Agrees to follow the Military Commissions rules.

- The accused shall be present at all sessions of the military commission, other than those for deliberations and voting. The military judge may only exclude the accused if the accused persists in conduct that is disruptive or threatens the physical safety of individuals.
- The military judge may admit evidence that would have “probative value to a reasonable person.” Evidence may not be excluded on the grounds that it was not seized pursuant to a search warrant. This standard of evidence takes into account the unique battlefield environment that is different from traditional peacetime law enforcement practices in the United States.
- A finding of guilt and the imposition of a sentence must be with the concurrence of two-thirds of the Military Commission members.
- If there is a finding of guilt, the Military Commission members may impose any appropriate sentence, including death if referred as a capital case by the convening authority. A sentence of death requires a unanimous vote of at least twelve members.
- After the Military Commission has delivered its verdict and imposed a sentence:
 - All records of trial must be reviewed by the Convening Authority who may return the case to the Military Commission for further proceedings if he determines it is not administratively complete. The Convening Authority may take action on the sentence only after consideration of matters submitted by the accused.
 - Each case which includes a finding of guilt is referred to the Court of Military Commission Review. The Secretary of Defense will establish a Court of Military Commission Review composed of at least three appellate military judges. The judges may be military or civilian.
 - The United States Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction to determine the validity of any final decisions of a Military Commission case. The Supreme Court may review by writ of certiorari the final judgment of the Court of Appeals.